

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROSALBA RODRIGUEZ

Claimant

VS.

EXCEL CORPORATION

Respondent

Self-Insured

)
)
)
)
)
)
)

Docket No. 262,529

ORDER

Claimant requested Appeals Board review of Administrative Law Judge Pamela J. Fuller's June 13, 2002, Decision. The Appeals Board placed this case on its summary docket for decision without oral argument.

APPEARANCES

Claimant appeared by her attorney, Chris A. Clements of Wichita, Kansas. Respondent, a qualified self-insured, appeared by its attorney, D. Shane Bangerter of Dodge City, Kansas.

RECORD AND STIPULATIONS

The Appeals Board (Board) has considered the record and has adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge (ALJ) awarded claimant a 3.5 percent permanent partial general disability based on permanent functional impairment for bilateral upper extremity injuries caused by claimant's repetitive work activities while employed by respondent. Claimant appeals and questions only the 3.5 percent permanent partial general disability award. Specifically, claimant argues the most persuasive and credible permanent functional impairment opinion is the 15 percent opinion of Dr. Pedro A. Murati. Work disability is not an issue because claimant remains employed by the respondent earning an average weekly wage greater than her pre-injury average weekly wage. Accordingly, claimant requests the Board to increase the Award from a 3.5 percent to a 15 percent permanent partial general disability.

Conversely, respondent requests the Board to affirm the ALJ's 3.5 percent permanent partial general disability award.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs and the parties' arguments, the Board makes the following findings and conclusions:

The claimant argues her repetitive work activities while employed by the respondent resulted in her suffering bilateral carpal tunnel syndrome and myofascial pain syndrome affecting her neck and shoulders. Claimant first sought medical treatment for pain and swelling in her hands, bilateral shoulder pain, bilateral elbow pain and neck pain at respondent's medical facility located in its plant.

Claimant saw respondent's company physician, J. Raymondo Villanueva, M.D., on August 10, 2000. Dr. Villanueva is a physical medicine and rehabilitation physician. After examining the claimant, Dr. Villanueva's assessment was that claimant suffered from a cumulative trauma disorder causing pain and swelling in her hands, right elbow, neck and bilateral shoulders.

Dr. Villanueva saw claimant on eight separate occasions from August 10, 2000, through December 14, 2000. His treatment for claimant's upper extremity complaints and neck consisted of medications, physical therapy, home exercise, injections and work restrictions. This conservative treatment improved claimant's symptoms.

On December 14, 2000, Dr. Villanueva determined that claimant had met maximum medical improvement and released her from his treatment. At that time, however, claimant continued to have swelling and pain at the dorsum level of her hands. The doctor placed permanent restrictions on claimant's work activities of no more than 24 repetitions per minute with the right and left hands; limited lifting to 15 pounds occasionally, 10 pounds frequently, and 8 pounds constantly; no use of a hook or knife; and claimant was to wear a protective glove on both hands. In accordance with the American Medical Ass'n *Guides to the Evaluation of Permanent Impairment*, (4th ed.) (AMA Guides 4th ed.), Dr. Villanueva assessed 4 percent permanent functional impairment for each upper extremity and converted the upper extremity ratings to a whole body ratings. He then combined those whole body ratings for a 5 percent whole body permanent functional impairment.

At claimant's attorney's request, Dr. Pedro A. Murati, a physical medicine and rehabilitation physician, examined claimant on February 20, 2001. He found claimant with complaints of pain in both hands, wrists, shoulders and elbows. He diagnosed claimant with bilateral carpal tunnel syndrome and myofascial pain syndrome affecting the neck and bilateral shoulders. Utilizing the AMA Guides 4th ed., Dr. Murati determined claimant had a 6 percent whole body permanent functional impairment of each upper extremity secondary to carpal tunnel syndrome and a 4 percent whole body permanent functional impairment for the myofascial pain syndrome affecting the neck. Those whole body permanent functional impairments were combined for a 15 percent whole body functional impairment.

Because of the variation in the functional impairment ratings, the ALJ appointed, orthopedic surgeon Theodore J. Sandow, M.D., to perform an independent medical examination of claimant. Dr. Sandow saw claimant on June 27, 2001. He found claimant with pain in her neck, shoulders, arms and hands. She described the pain in her hands as a "pulsating and throbbing" pain. Dr. Sandow obtained x-rays of claimant's cervical spine and found those normal. He concluded that claimant had excessive subjective symptoms with no objective findings. Dr. Sandow recommended claimant undergo electromyography (EMG) testing of her upper extremities for evidence of carpal tunnel syndrome or cervical nerve root irritation.

As a result of Dr. Sandow's recommendation, on August 31, 2001, Dr. Villanueva performed a nerve conduction and EMG examination of claimant's upper extremities. That testing found only a minor abnormality of the left ulnar nerve at the level of the wrist.

Dr. Sandow reviewed the nerve conduction testing results and in a report dated October 22, 2001, concluded claimant had no evidence of radiculopathy and no substantial objective evidence to substantiate claimant's subjective complaints. He assessed claimant with a 2 percent permanent functional impairment for each upper extremity. He converted the upper extremity ratings to whole body ratings and combined the whole body ratings resulting in a 2 percent whole person permanent functional impairment.

Before Dr. Murati's deposition testimony, he had reviewed Dr. Villanueva's EMG and nerve conduction examination results. Dr. Murati did not agree with Dr. Villanueva's conclusions based on the nerve conduction examination results. Dr. Murati opined that the examination was incomplete because no study was done to measure the median motor nerve conduction velocity. Also Dr. Murati opined that Dr. Villanueva failed to perform an examination to compare the median nerve and radial sensory response. Moreover, Dr. Murati concluded that both Dr. Villanueva and Dr. Sandow misread the nerve conduction testing results because they are not adequately trained to interpret nerve conduction studies.

Conversely, during Dr. Villanueva's deposition, he rebutted Dr. Murati's interpretation of the nerve conduction and EMG examination he had performed on claimant. Dr. Villanueva testified he did do the median motor nerve conduction velocity testing and the results were completely normal. Dr. Villanueva admitted he did not do testing of the median sensory conduction velocity to the thumb as well as the radial sensory conduction velocity to the thumb. Dr. Villanueva reasoned that testing was not done because, based on the symptoms claimant expressed, the American Association of Electrodiagnostic Medicine standards do not recommend that testing as part of the test for the diagnosis of carpal tunnel syndrome.

Neither claimant's treating physician, Dr. Villanueva, nor Dr. Sandow, the independent medical examiner, diagnosed claimant with either bilateral carpal tunnel syndrome or myofascial pain syndrome of the neck. Only claimant's independent medical

examiner Dr. Murati made those diagnoses and based his 15 percent whole person permanent functional impairment on those conditions.

The Board concludes that Dr. Villanueva and Dr. Sandow's determination that claimant's permanent injuries should be restricted to her upper extremities and further that those upper extremity injuries do not include bilateral carpal tunnel syndrome are the most persuasive and credible medical opinions contained in the record. Thus, the Board finds the ALJ's conclusion that Dr. Villanueva's 5 percent whole person permanent functional impairment and Dr. Sandow's 2 percent whole person permanent functional impairment should be given equal weight resulting in claimant's entitlement to a 3.5 percent permanent partial general disability should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Board that ALJ Pamela J. Fuller's June 13, 2002, Decision, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of February, 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris A. Clements, Attorney for Claimant
D. Shane Bangerter, Attorney for Respondent
Pamela J. Fuller, Administrative Law Judge
Director, Division of Workers Compensation